

ORIGINAL

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

FILED

FEB - 2 2009

CLERK, U.S. DISTRICT COURT

By
DeputyIN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISIONSECURITIES AND EXCHANGE
COMMISSION,

Plaintiff

v.

MARK CUBAN,

Defendant

Civil Action No. 3:08-cv-02050 (SAF)

MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS

Professor Allen Ferrell, on behalf of himself and Professors Stephen Bainbridge, Alan R. Bromberg, M. Todd Henderson, and Jonathan R. Macey, as *amici curiae*, request leave to file the brief attached to this motion as Exhibit A in support of Defendant Mark Cuban's Motion to Dismiss.

The *amici curiae* are law professors who study, analyze, write about, and teach the federal securities laws and their role in regulating U.S. capital markets. The law professors joining this submission as *amici curiae*, listed alphabetically, are:

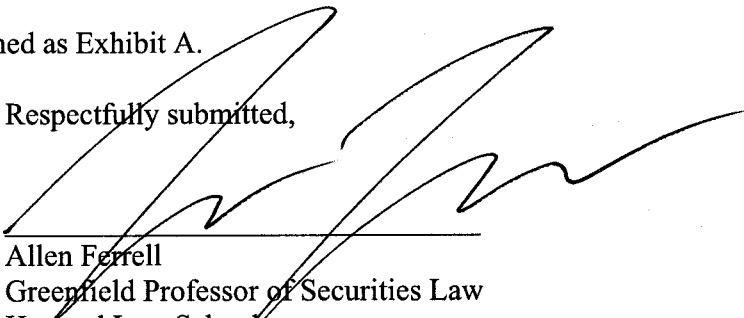
- Professor Stephen Bainbridge, the William D. Warren Professor of Law at UCLA Law School;
- Professor Alan R. Bromberg, a University Distinguished Professor of Law at SMU Dedman School of Law;
- Professor Allen Ferrell, the Greenfield Professor of Securities Law at Harvard Law School;
- Professor M. Todd Henderson, an Assistant Professor of Law at the University of Chicago Law School; and
- Professor Jonathan R. Macey, the Sam Harris Professor of Corporate Law, Finance, and Securities Regulation at Yale Law School.

The full curricula vitae of the *amici curiae* are attached as Exhibit B to this motion.¹

The *amici curiae* are interested in the predictable interpretation of the securities laws in accordance with the statutory text and purpose. The case against Mark Cuban presents an important interpretive issue concerning the application of insider trading law. For the reasons set forth in the attached *amici curiae* submission, the *amici curiae* support the dismissal of the complaint against Mark Cuban.

Accordingly, the *amici curiae* respectfully request – pursuant to Local Rule 7.2 – that this Court grant them leave to file the brief attached as Exhibit A.

Respectfully submitted,



Allen Ferrell
Greenfield Professor of Securities Law
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On Behalf of the Amici Curiae


¹ The *amici curiae* did not receive any form of compensation with respect to their *amici curiae* submission and the views expressed in the brief are their own. Counsel for Mark Cuban provided the *amici curiae* with assistance in the preparation of the submission.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion for Leave to File Amici Curiae Brief in Support of Defendant's Motion to Dismiss was served on the counsel of record listed below, by first class U.S. mail, on February 2, 2009.

Mr. Kevin P. O'Rourke
U. S. SECURITIES AND EXCHANGE COMMISSION
100 F St. NE, Washington, DC 20549
Attorney for Plaintiff
Securities and Exchange Commission

Mr. Lyle Roberts
DEWEY & LEBOEUF LLP
1101 New York Avenue, NW
Washington, D.C. 20005
Attorney for Defendant
Mark Cuban



Allen Ferrell

EXHIBIT A

**PROPOSED BRIEF IN SUPPORT OF DEFENDANT'S
MOTION TO DISMISS**

In the context of a business relationship, a confidentiality agreement alone is insufficient to create a fiduciary or similar relationship of trust and confidence between the parties. Under both state and federal common law, a confidentiality agreement alone creates only an obligation

to maintain the secrecy of the information, not a fiduciary or fiduciary-like duty to act loyally to the source of the information. In the absence of any other facts or circumstances indicating the existence of a fiduciary or similar relationship of trust and confidence, there can be no insider trading liability based on the misappropriation theory pursuant to Section 10(b).

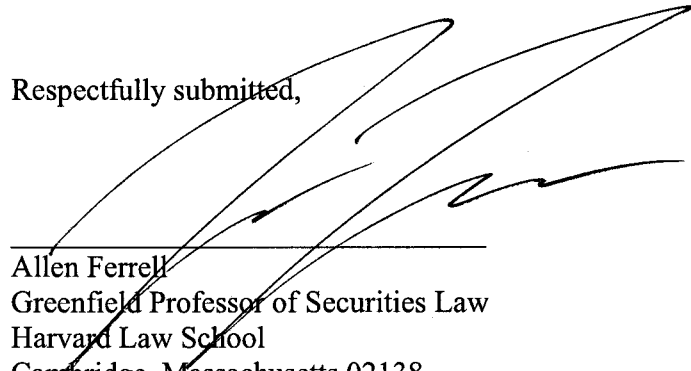
After the *O'Hagan* decision, the Securities and Exchange Commission (SEC) promulgated Rule 10b5-2. 17 C.F.R. § 240.10b5-2 (2002). The adopting release states that the rule was designed to address when "a breach of a family or other non-business relationship may give rise to liability under the misappropriation theory of insider trading." *Selective Disclosure and Insider Trading*, 65 FR 51716 (Aug. 24, 2000). Federal courts likewise have found that Rule 10b5-2 does not apply in the context of business relationships. *See, e.g., SEC v. Talbot*, 430 F. Supp. 2d 1029, 1061 n.91 (C.D. Cal. 2006).

Rule 10b5-2 purports to provide a non-exclusive list of three situations in which a person is deemed to have a "duty of trust or confidence" for purposes of applying the theory. 17 C.F.R. § 240.10b5-2 (2002) (preliminary note). The first situation in which a person is deemed to have a "duty of trust or confidence" is "[w]hen a person agrees to maintain information in confidence." *Id.* § 240.10b5-2(b)(1).

Assuming that Rule 10b5-2(b)(1) is even applicable to business relationships, a confidentiality agreement alone would be insufficient to establish the existence of a fiduciary or similar relationship of trust and confidence. The SEC's use of the phrase "trust or confidence" in Rule 10b5-2(b)(1), as opposed to the *O'Hagan* standard of "trust and confidence," suggests that the SEC sought to go beyond the *O'Hagan* articulation of the misappropriation theory. If Rule 10b5-2(b)(1) creates potential liability based *solely* on the existence of a confidentiality agreement, the rule is an invalid exercise of the agency's rulemaking authority. Interpreted in

this manner, Rule 10b5-2(b)(1) directly contradicts the Supreme Court's rulings on the scope of Section 10(b) liability for insider trading because it would create liability without the existence of a fiduciary or similar relationship of trust and confidence. The SEC does not have the authority to adopt rules that impermissibly expand the scope of Section 10(b) liability. *Santa Fe Industries, Inc. v. Green*, 430 U.S. 462 (1977); *Ernst & Ernst v. Hochfelder*, 425 U.S. 185 (1976).

Respectfully submitted,



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On Behalf of Himself and the Amici Curiae:

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William D. Warren Professor of Law
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M. Todd Henderson
Assistant Professor of Law
University of Chicago Law School
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Chicago, IL 60637
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Alan R. Bromberg
University Distinguished Professor of Law
SMU Dedman School of Law
Dallas, Texas
abromber@mail.smu.edu

Jonathan R. Macey
Sam Harris Professor of Corporate Law,
Finance, and Securities Regulation
Yale Law School
127 Wall Street
New Haven, CT 06511
jonathan.macey@yale.edu

EXHIBIT B

CURRICULA VITAE OF THE *AMICI CURIAE*

January 31, 2009

Stephen M. Bainbridge
UCLA School of Law
405 Hilgard Avenue
Los Angeles, CA 90095
310.206.1599
bainbridge@law.ucla.edu
www.ProfessorBainbridge.com

EDUCATION

A.B., cum laude, Western Maryland College, 1980
M.S., University of Virginia Graduate School of Arts & Sciences, 1983
J.D., University of Virginia School of Law, 1985

PREVIOUS EMPLOYMENT

Summer Associate, White & Case, New York, New York, 1984
Law Clerk, The Honorable Frank A. Kaufman, Chief Judge, United States District Court for the District of Maryland, Baltimore, Maryland, 1985-86
Associate, Arnold & Porter, Washington, D.C., 1986-88
Assistant Professor, University of Illinois College of Law, 1988-92
Associate Professor, University of Illinois College of Law, 1992-94
Professor, University of Illinois College of Law, 1994-97

UCLA SERVICE

ACADEMIC AND ADMINISTRATIVE TITLES

Visiting Professor, University of California, Los Angeles, 1996-97
Professor, University of California, Los Angeles, 1997-present

LAW SCHOOL COURSES TAUGHT

<u>Date</u>	<u>No.</u>	<u>Title</u>	<u>Units</u>	<u>Enrollment</u>
F 1996	230.	Business Associations	4	108
F 1996	237.	Corporate Finance	3	54
S 1997	236.	Securities Regulation	3	91
F 1997	228A.	Mergers and Acquisitions	3	38
S 1998	230.	Business Associations	4	109
S 1998	237.	Corporate Finance	3	80
F 1998	230.	Business Associations	4	112
S 1999	237.	Corporate Finance	3	89
S 1999	228A.	Mergers and Acquisitions	3	56
F 1999	230.	Business Associations	4	89
S 2000	237.	Corporate Finance	3	89
S 2000	506A.	Seminar - Corporate Governance	3/2	9
F 2000		On Leave [at Harvard]		
S 2001		On Leave [at Harvard]		

F 2001		Sabbatical		
S 2002	230.	Business Associations	4	81
F 2002	366.	Unincorporated Business Associations	3	16
S 2003	230.	Business Associations	4	122
S 2003	231.	Advanced Corporation Law	3	16
F 2003	231.	Advanced Corporations	3	20
S 2004	366.	Unincorporated Business Associations	3	9
S 2004	230.	Business Associations	4	109
F 2004	230.	Business Associations	4	85
F 2004	506.	Seminar: Corporations	3/2	12
S 2005	230.	Business Associations	4	104
F 2005	230.	Business Associations	4	85
S 2006	231.	Advanced Corporate Law	4	59
S 2006	589.	Seminar – Corporate Governance Colloquium	3/2	14
F 2006	230.	Business Associations	4	154
S 2007	589.	Seminar – Corporate Governance Colloquium	3/2	14
S 2007	230.	Business Associations	4	85
F 2007		Sabbatical		
S 2008	230.	Business Associations	4	
S 2008	237.	Corporate Finance	3	

LAW SCHOOL COMMITTEE MEMBERSHIP

Business Law Committee, 1997-98; 1998-99; Chair, 1999-00; 2001-02 (S); 2005-06; 2007-08 (S)
 External Appointments Committee, 1998-99
 Appointments: Business Law & Law & Economics Search Subcommittee, 1998-99
 Appointments: Business Law Search Subcommittee, 2000-01
 Library & Technology, Chair, 2001-02; 2003-04; 2007-08 (S)
 Internal Appointments, 2002-03; 2006-07
 Career Services Committee, 2005-06

OTHER UNIVERSITY TEACHING

Special Topics in Management, Management 180, UCLA Summer Sessions International Program
 (2006)
 Special Topics in Management, Management 180, UCLA Summer Sessions International Program
 (2007)

ADDITIONAL ACADEMIC AND OTHER APPOINTMENTS

Student, George Mason University School of Law, Law and Economics Center, Economics Institute
 for Law Professors, Dartmouth, NH, July 1994
 Visiting Professor, Aoyama Gakuin University, Tokyo, May 1999
 Joseph Flom Visiting Professor of Law and Business, Harvard Law School, 2000-01
 Visiting Professor, La Trobe School of Law, Melbourne, Australia, July 2005
 Distinguished Visiting Scholar, University of Maryland School of Law, Baltimore, Maryland,
 November 2005

Francis G. Pileggi Distinguished Lecturer in Law, Widener University School of Law, September 16, 2005

Visiting Professor, La Trobe School of Law, Melbourne Australia, November 2007

SERVICE TO PROFESSIONAL SOCIETIES AND ORGANIZATIONS

District of Columbia Bar

Admitted, November 1986

Active member, 1986-96

Inactive member, 1996-98

Federalist Society

Member, since 1998

E-Communications Vice Chairman and Executive Committee member, Corporations, Securities & Antitrust Practice Group, since 2001

Association of American Law Schools

Executive Committee of the Section on Business Associations, 2003-2006

Member, Planning Committee for June 2009 Mid-year Conference on Business Associations

Member, American Bar Association Committee on Corporate Laws, 2008-2014

SERVICE ON EDITORIAL BOARDS

Member, Editorial Advisory Board, Journal of Markets and Morality, 2004-2006

AWARDS, HONORS, COMMENDATIONS

Omicron Delta Kappa, University of Virginia School of Law, 1985

Order of the Coif, University of Virginia School of Law, 1985 (class rank in top ten percent of graduating class)

Best Instructor Award, University of Illinois College of Law, 1990

"Insider Trading under the Restatement of the Law Governing Lawyers," Named as One of The Best Corporate and Securities Articles of 1994 by Corporate Practice Commentator

Salvatori Fellow, Heritage Foundation, 1994-96

"Director Primacy: The Means and Ends of Corporate Governance," Named as One of The Best Corporate and Securities Articles of 2003 by, Corporate Practice Commentator, Vanderbilt Law School

"The Business Judgment Rule as Abstention Doctrine," Named as One of The Best Corporate and Securities Articles of 2004 by, Corporate Practice Commentator, Vanderbilt Law School

"Director Primacy and Shareholder Disempowerment," Named as One of The Best Corporate and Securities Articles of 2006, by Corporate Practice Commentator, Vanderbilt Law School

Appointed as William D. Warren Professor of Law, UCLA School Of Law, 2006

Rutter Award for Excellence in Teaching, UCLA School of Law, 2008

FELLOWSHIPS AND RESEARCH GRANTS

Grant Recipient, Ross and Helen Workman Law Research Fund, University of Illinois College of Law, 1992, 1994

INVITED LECTURES, PAPERS AT MEETINGS AND SIMILAR ACTIVITIES

- Presentation, "Consideration of Nonshareholder Interests in Corporate Decisionmaking: Moral Obligations and Legal Limitations," Fourth Annual Symposium on Law, Religion and Ethics, Hamline University School of Law, October 25, 1991.
- Paper, "Interpreting Nonshareholder Constituency Statutes," University of Illinois College of Law alumni meeting, St. Louis, Missouri, March 12, 1993; Current Issues in Securities Regulation Symposium, Pepperdine University School of Law, February 22, 1992, transcribed at 19 Pepperdine Law Review 1229 (1992).
- Presentation, "Nonshareholder Constituency Statutes," University of Illinois College of Law alumni meeting, St. Louis, Missouri, March 12, 1993.
- Presentation, "Hate Speech," UIUC Senate Meeting, Champaign, Illinois, October 4, 1993.
- Paper, "Independent Directors and the ALI Corporate Governance Project," The ALI Principles of Corporate Governance and the Future of Corporate Law Symposium, Cardozo School of Law, October 15, 1993.
- Paper, "In Defense of the Shareholder Wealth Maximization Norm," New Directions in Corporate Law Symposium, Washington and Lee University School of Law, November 5, 1993.
- Presentation, "Implications of Modern Portfolio Theory and Efficient Capital Markets Theory for Trust and Estate Administration," Eastern Illinois Estate Planners Council Meeting, Urbana, Illinois, February 8, 1994.
- Paper, "Student Religious Organizations and University Policies Against Discrimination on the Basis of Sexual Orientation," Following Christ in the Legal Academy Conference, Geneva College Center for Law and Public Policy, January 4, 1995; Higher Education, Student Affairs and the Law Conference, University of Illinois, May 19, 1994.
- Presentation, "Business Structure Choices in the 90s," Illinois Institute of Continuing Legal Education, First Annual Short Course on Advising Illinois Businesses, Champaign, Illinois, October 13, 1994.
- Presentation, "Student Religious Organizations and University Policies Against Discrimination on the Basis of Sexual Orientation," Following Christ in the Legal Academy Conference, Geneva College Center for Law and Public Policy, January 4, 1995.
- Paper, "The Role of State Law Fiduciary Duties Within the Federal Insider Trading Prohibition," Stetson University College of Law faculty workshop, March 14, 1995; University of Missouri-Columbia School of Law faculty workshop, February 27, 1995; and Southern Illinois University School of Law faculty workshop, April 29, 1994.
- Presentation, "Christian Fiction: Legal Issues for Libraries," Mid-Illinois Readers' Advisory Group's Program on Christian Fiction, Champaign, Illinois, March 30, 1995.
- Presentation, "Redeeming Law and Economics," Following Christ in the Legal Academy Conference, San Antonio, Texas, January 3, 1996.
- Paper, "Participatory Management Within a Theory of the Firm," University of Alabama School of Law faculty workshop, September 21, 1996; George Mason University School of Law faculty workshop, February 13, 1996.
- Invited Lecture, "Corporate Decisionmaking and the Moral Rights of Employees: Participatory Management and Natural Law," Donald A. Gianella Memorial Lecture, Villanova University School of Law, April 1, 1998; Case Western University School of Law faculty workshop, February 20, 1998.
- Paper, "Privately Ordered Participatory Management: An Organizational Failures Analysis," American Law and Economics Association Annual Meeting, American Law and Economics Association, May 8 - May 9, 1998; Columbia Law School Sloan Project on Corporate

- Governance Conference on Alternative Perspectives on Corporate Governance, January 23, 1998; George Mason University School of Law faculty workshop, November 13, 1997.
- Presentation, "The Doctrinal Incoherence of *United States v. O'Hagan*," Southern Methodist University Law Review Corporate Counsel Symposium, October 2, 1998.
- Invited Discussant, Alfred P. Sloan Foundation Conference on Team Production at Georgetown Law Center, March 4-5, 1999.
- Presentation, "The Law and Economics of Insider Trading," Aoyama Gakuin University Faculty of Law faculty seminar, Tokyo, May 27, 1999.
- Presentation, "Fiduciary Responsibilities of the Non-Profit Board," Associated Students UCLA 1999-2000 Board of Directors Orientation Retreat, June 21, 1999.
- Co-organizer and moderator, 1999 UCLA School of Law Corporate Governance Conference, September 17, 1999.
- Paper, "Insider Trading Regulation: The Path Dependent Choice between Property Rights and Securities Fraud," Notre Dame Law School faculty workshop, October 1, 1999.
- Presentation, "*Kovacik v. Reed* and the Allocation of Capital Losses in Service Partnerships," faculty workshop at the Emory University School of Law, October 13, 1999.
- Paper, "Contractarianism in the Business Associations Classroom," Teaching Corporate Law Conference at the University of Georgia School of Law, October 15, 1999.
- Presentation, "*Kovacik v. Reed* and the Allocation of Capital Losses in Service Partnerships," UCLA School of Law seminar for visiting lawyers, November 8, 1999.
- Invited Lecturer, "Behavioral Economics of Mandatory Disclosure," UCLA School of Law faculty workshop, February 28, 2000; Pepperdine University School of Law faculty workshop, March 3, 2000; University of Cincinnati College of Law Center for Corporate Law, Thirteenth Annual Corporate Law Symposium, March 9, 2000; and also presented as a paper at the University of San Diego School of Law faculty workshop, April 7, 2000.
- Paper, "Employee Involvement in Workplace Governance Post-Collective Bargaining," The Study of Legality: A Conference on Philip Selznick's Law, Society, and Industrial Justice, University of California at Berkeley, April 14, 2000.
- Presentation, "Fiduciary Responsibilities of the Non-Profit Board," Associated Students UCLA 2000-01 Board of Directors Orientation Retreat, June 20, 2000.
- Co-organizer, UCLA/USC Corporate Law Roundtable, October 13, 2000.
- Paper, "Abolishing Veil Piercing," Boston College School of Law faculty workshop, October 18, 2000.
- Paper, "Constraints on Shareholder Activism: A U.S.-Slovenia Comparison," Northwestern University School of Law faculty workshop, November 1, 2000.
- Paper, "Corporate Boards and Group v. Individual Decisionmaking," University of Illinois College of Law faculty workshop, March 8, 2001; Harvard Law School Law and Economics seminar, April 20, 2001.
- Paper, "Judging Shortcuts: The Role of Judicial Decisionmaking in Corporate and Securities Law," University of Michigan Law School John M. Olin Center for Law and Economics, April 20, 2001.
- Paper, "Director Primacy: The Means and Ends of Corporate Governance," Georgetown-Sloan Project on Business Institutions Conference, Georgetown Law Center, October 11, 2001.
- Paper, "Why a Board? Group Decision Making in Corporate Governance," University of Texas Law School faculty workshop, November 2, 2001.
- Paper, "Why a Board?," UCLA/USC Corporate Law Roundtable, November 2, 2001.
- Co-organizer, UCLA/USC Corporate Law Roundtable, November 9, 2001.
- Paper, "Director v. Shareholder Primacy in the Convergence Debate," 21st Annual International Law Symposium, McGeorge School of Law, February 23, 2002.

- Paper, "The Bishops and the Corporate Stakeholder Debate," Symposium on Religion and Investing, Villanova University School of Law, April 6, 2002.
- Paper, "The Board as Nexus of Contracts," UCLA School of Law faculty workshop, April 15, 2002.
- Invited Participant, Federalist Society Western Leadership Conference, June 1, 2002.
- Presentation, "Sarbanes-Oxley and the Creeping Federalization of Corporate Law," Gonzaga University School of Law Federalist Society Chapter, October 18, 2002.
- Paper, "Dead Hand and No Hand Pills: Precommitment Strategies in Corporate Law," Ohio State College of Law faculty workshop, October 25, 2002.
- Co-organizer and Moderator, UCLA/USC Corporate Law Roundtable, November 8, 2002.
- Presentation, "Corporate Governance Today," UCLA School of Law Board of Advisors Meeting, December 10, 2002.
- Presentation, "The NYSE's Director Independence Standards," Section on Securities Regulation Workshop, AALS Annual Meeting, January 3, 2003.
- Paper, The Bishops and the Corporate Stakeholder Debate, Law Professors' Christian Fellowship Annual Conference, Saturday, January 4, 2003.
- Presentation, Director Primacy and Sarbanes-Oxley § 307, Joint Program of Sections on Business Associations and Professional Responsibility, AALS Annual Meeting, January 5, 2003.
- Paper, "Dead Hand and No Hand Pills: Precommitment Strategies in Corporate Law, Law and Economics Seminar," University of California at Berkeley Law School, February 10, 2003.
- Presentation, Current Issues in Corporate Governance, Capital Forum, California Senate Office of Research, March 20, 2003.
- Panelist, "Corporate Governance Guidelines: Common Ground – Realistic Expectations," John L. Weinberg Center for Corporate Governance, University of Delaware, April 17, 2003.
- Invited Participant, Federalist Society Western Leadership Conference, May 31, 2003.
- Presentation, "Fiduciary Responsibilities of the Non-Profit Board," Associated Students UCLA 2003-2004 Board of Directors Orientation Retreat, June 18, 2003.
- Invited Discussant, "Conference on the Role of Law in Creating Value for Shareholders," University of California at Berkeley Law School, August 24, 2003.
- Paper, "Managerialism, Legal Ethics, and Sarbanes-Oxley § 307," Symposium on Sarbanes-Oxley: In the Wake of Corporate Governance Reform, Michigan State University DCL College of Law, September 19, 2003.
- Panelist, "The Corporation through the Lens of Catholic Social Thought, Symposium on Catholic Social Thought, Villanova University School of Law, October 4, 2003.
- Commentator, Law and Business Conference, Vanderbilt Law School, October 17, 2003
- Invited Lecture, The Business Judgment Rule, 2003-2004 Endries Distinguished Lecture Series, Syracuse University College of Law, January 23, 2004
- Presentation, "Competing Concepts of the Corporation (a.k.a. Criteria? Just Say No)," Indiana University School of Law Faculty Colloquium, September 17, 2004
- Presentation, "The Behavioral Challenge to the Efficient Capital Markets Hypothesis," UCLA School of Law Faculty Colloquium, October 18, 2004
- Presentation, "The Creeping Federalization of Corporate Law," Chapman University School of Law Federalist Society, November 15, 2004
- Presentation, "Shareholder Director Nominations: A Comment on Proposed SEC Rule 14a-11," Workshop on Democratic Governance: Elections and Shareholder Participation in the Selection of Corporate Boards, Association of American Law Schools Annual Meeting, January 6, 2005
- Paper, "Competing Concepts of the Corporation (a.k.a. Criteria? Just Say No)," Mercatus Center/Berkeley Business Law Journal Symposium on The Criteria for Good News of Business Association, January 8, 2005

- Presentation, "Ethical and Legal Obligations of Lawyers in the Current Environment After Sarbanes-Oxley," UCLA Law Alumni Los Angeles Chapter, January 20, 2005
- Presentation, "Corporate Lawyers and Social Responsibility," Pepperdine University School of Law Institute on Law, Religion, and Ethics Conference on Lawyers, Faith, and Social Justice: Our Responsibility to "The Orphan, The Widow, The Alien," and "The Least of These," February 5, 2005
- Presentation, "Who Rules the Boardroom?," Loyola Law School Federalist Society Chapter, March 3, 2005
- Presentation, "Executive Compensation," University of Colorado School of Law faculty workshop, March 11, 2005
- Moderator, Panel Discussion, Trial Lawyers, Inc.: California - A Report on the Lawsuit Industry in California, Manhattan Institute Center for Legal Policy, Milken Institute, June 15, 2005
- Presentation, "The Non-Profit Board: Role and Duties," Associated Students of UCLA 2005-2006 Board of Directors Orientation Retreat, June 22, 2005
- Panelist, Beyond Sarbanes-Oxley - Continued Corporate Transparency, Loyola Marymount Center for Executive Learning, June 29, 2005
- Lecture, "Unocal at 20: Director Primacy in Corporate Takeovers," Francis G. Pileggi Distinguished Lecture in Law, Widener University School of Law, September 16, 2005
- Paper, "Shareholder Activism by Institutional Investors," The New Corporate Governance Conference: Panel on "The Active Shareholder," Washington University School of Law, September 30, 2005
- Paper, "Shareholder Activism by Institutional Investors," University of Maryland School of Law faculty colloquium, November 2, 2005
- Keynote Speaker, "Much Ado About Little? Directors' Fiduciary Duties in the Vicinity of Insolvency," Conference on Twilight in the Zone of Insolvency: Fiduciary Duty and Creditors of Troubled Companies, University of Maryland School of Law, November 4, 2005
- Panelist, "Corporate Responsibility," UCLA Business Law Association, November 8, 2005
- Paper, "The Bishop's Alter Ego: Enterprise Liability in Priest Sex Abuse Litigation," St. John's School of Law, March 27, 2006
- Keynote Speaker, "Managing Alter Ego Liability Risk in Restructuring the Parish-Diocese Relationship," Roundtable Discussion on Canon Law and Civil Law Considerations in Diocesan Restructuring, Western Diocesan Attorneys Association, September 8, 2006
- Presentation, "Director Primacy," The Forum for Corporate Directors' Third Annual Directors' Institute, November 1, 2006
- Presentation, "The Complete Guide to Sarbanes-Oxley," State Bar of Nevada, February 9, 2007
- Presentation, "Sarbanes-Oxley § 404: Current Issues," Liner Yankelevitz & Sunshine, March 28, 2007
- Panelist, "Roundtable on the Proxy Process," Securities and Exchange Commission, May 7, 2007
- Panelist, "The Future of Wall-Street," Manhattan Institute, April 26, 2007
- Panelist, "Roundtable on the Proxy Process," Securities and Exchange Commission, May 7, 2007
- Keynote Speaker, "Sarbanes-Oxley at 5," Manhattan Institute, June 20, 2007
- Guest, Academics and Economists' Dinner with Securities and Exchange Chairman Christopher Cox and Commissioner Paul Atkins, Reason.org. September 19, 2007
- Panelist, Conversation on Stoneridge Investment Case, UCLA School of Law, September 26, 2007
- Panelist, American Bar Associations Section on Administrative Law Program on Stoneridge, February 8, 2008
- Panelist, Say On Pay: A Positive Contribution to Corporate Effectiveness and Accountability or an Unprincipled and Costly Incursion into Director Authority?, Chancery Court Program, Penn Institute of Law and Economics, March 4, 2008

- Presentation, Remarks on Investor Activism: Reshaping the Playing Field?, Vanderbilt Law School Law and Economics Workshop, March 24, 2008
- Presentation, Remarks on Investor Activism: Reshaping the Playing Field?, Federal Reserve Bank of Atlanta, Financial Markets Conference, May 14, 2008
- Panelist, Stockholders at the Wheel: Shareholder Access Rule, Federalist Society Corporations, Securities, and Antitrust Practice Group Program, National Press Club, Washington DC, September 23, 2008
- Moderator, New Directions in Corporate Governance, UCLA Business Law Breakfast Series, October 21, 2008
- Presentation, Bubble Laws and the Financial Crisis of 2008, Santa Clara School of Law Federalist Society, October 22, 2009
- Presentation, Are We Facing the Great Depression 2.0? The Financial Crisis of 2008, Pepperdine University School of Law Federalist Society Chapter, October 28, 2008
- Presentation, Bubble Laws and the Financial Crisis of 2008, Western State University School of Law, October 29, 2009
- Presentation, Bubble Laws and the Financial Crisis of 2008, Orange County Federalist Society Chapter, Irvine, CA, November 4, 2008
- Panelist, The Credit Crisis: Avoiding the Next Great Depression, UCLA School of Law, November 5, 2008
- Presentation, Bubble Laws and the Financial Crisis of 2008, USC Federalist Society Chapter, November 11, 2008
- Moderator, The SEC and the Financial Crisis of 2008, Federalist Society National Lawyers Convention, Washington DC, November 22, 2008

BIBLIOGRAPHY

Books

- Corporate Law (Foundation Press Concepts & Insights Series 2nd edition 2009)
- Mergers and Acquisitions (Foundation Press Concepts & Insights Series 2nd edition 2009)
- The New Corporate Governance in Theory and Practice (Oxford University Press 2008)
- The Complete Guide to Sarbanes-Oxley: Understanding How Sarbanes-Oxley Affects Your Business (Adams Business 2007)
- Securities Law—Insider Trading (Foundation Press Turning Points Series 2nd edition 2007)
- Agency, Partnerships, and Limited Liability Entities: Cases and Materials on Unincorporated Business Associations (Foundation Press 2nd edition 2006)
 - Teacher's Manual (Foundation Press 2007)
 - Co-editors: William A. Klein and J. Mark Ramseyer
- Business Associations: Cases and Materials on Agency, Partnerships, and Corporations (Foundation Press 6th edition 2006)
 - Teacher's Manual (Foundation Press 2006)
 - Co-editors: William A. Klein and J. Mark Ramseyer

Supplement: 2008

Agency, Partnerships & LLCs (Foundation Press Concepts & Insights Series 2004)

Mergers and Acquisitions (Foundation Press University Textbook Series 2003)

Business Associations: Cases and Materials on Agency, Partnerships, and Corporations (Foundation Press 5th edition 2003)

Teacher's Manual (Foundation Press 2003)

Co-editors: William A. Klein and J. Mark Ramseyer

Supplement (with Teacher's Manual): 2005

Corporation Law and Economics (Foundation Press University Textbook Series 2002)

Agency, Partnerships, and Limited Liability Entities: Cases and Materials on Unincorporated Business Associations (Foundation Press 2001)

Teacher's Manual (Foundation Press 2001)

Co-editors: William A. Klein and J. Mark Ramseyer

Business Associations: Cases and Materials on Agency, Partnerships, and Corporations (Foundation Press 4th edition 2000)

Teacher's Manual (Foundation Press 2000)

Co-editors: William A. Klein and J. Mark Ramseyer

Supplement (with Teacher's Manual): 2001

Securities Law—Insider Trading (Foundation Press 1999)

Business Associations: Agency, Partnerships, LLCs, and Corporations—Statutes and Rules (Foundation Press 1998)

Co-editors: William A. Klein and J. Mark Ramseyer

Subsequent editions: 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008

Supplement to the Third Edition of Cases and Materials on Business Associations: Agency Partnerships and Corporations (Foundation Press 1998)

Teacher's Manual (Foundation Press 1998)

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Law Clerk, Justice Anthony M. Kennedy
Supreme Court of the United States; 1996 Term

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COURSES TAUGHT

Securities Regulation
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American Law and Economics Review
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TALKS

Third Annual Structured Products Association Meeting, "Current Policy Issues Concerning Structured Products"

Annual Boston Analysts Society Meeting, "The Regulation of Structured Products"

Chairperson, Asian Exchange Conference, Singapore, "Issues Facing Asian Exchanges"

U.S. Senate Subcommittee on Securities, Insurance and Investment, "The Regulation of Cross-border Exchange Mergers"

Joint NASD/SEC Forum, "Law and Economics of Best Execution"

SEC Panel, "Econometrics of Measuring the Effects of Mandatory Disclosure"

American Enterprise Institute/Brookings Institution, "Shareholder Rights"

Brookings Institution, "Financial Innovation"

International Development Law Institute, "Corporate Law and Development"

World Bank, "Financial Market Development Indicators"

Shenzhen Stock Exchange, "Regulation of Insider Trading"

Numerous presentations at the National Bureau of Economic Research

PAPERS

"Legal and Economic Issues in Subprime Litigation," Working Paper, with Jennifer Bethel and Gang Hu.

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UnitedGlobalCom Shareholders Litigation, Civil Action No. 1012-N: Expert Report, deposition on November 15, 2007 and trial testimony scheduled for March 10, 2008 (valuation expert)

OTHER EXPERT ENGAGEMENTS

In re Livedoor Securities Litigation, 8 Tokyo District Court, Japan, Three Expert Reports (materiality, causation and securities damages)

Mitchell v. Key Energy, Civil Action No. 06-CV-45637 (disclosure and fiduciary obligations in context of stock option backdating)

Horizon Offshore Merger (valuation and disclosure issues in merger)

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In re Royal Dutch/Shell Transport Securities Litigation, Civil Action No. 04-374: Expert Report (class action suit against Royal Dutch Shell based on Rule 10b-5)

In re Cablevision Systems Corporation Litigation, Civil Action No. 05-009752: Expert Report (corporate governance issues)

Institut Pasteur v. Cambridge Biotech Corporation Expert Report (intellectual property rights)

Ralston Purina Expert Report (competitive effects of Ralston Purina – Nestle merger)

Mark-up Regulation of Stock Sales, Expert Report for the National Association of Securities Dealers on impact of its mark-up regulation on stock bid-ask spreads

Shareholder Rights, Wrote portion of the Report by the Committee on Capital Markets Regulation (“Paulson Committee”) on reforms of securities laws to improve the market for corporate control

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Experience:

2004-Present

The University of Chicago Law School, Chicago, Ill.
Assistant Professor of Law
Courses: Corporations, Securities Regulation, Corporate Governance, Mergers & Acquisitions, Regulation of Financial Innovations, Bailouts, International Intellectual Property

2001-2004

McKinsey & Company, Washington, D.C., Boston, Mass.
Engagement manager

1999-2001

Kirkland & Ellis, Washington, D.C.
Associate

1998-1999

Judge Dennis Jacobs, Second Cir. Ct. of Appeals, N.Y., N.Y.
Law clerk

Education:

1995-1998

The University of Chicago Law School, Chicago, Ill.
J.D. with high honors
Order of the Coif
University of Chicago Law Review

1989-1993

Princeton University, Princeton, N.J.
B.S.E. Civil Engineering & Operations Research, cum laude
J. Rich Steers Award for Academic Excellence
Elected to Sigma Xi honor society

Academic publications:

"Mark to Market: Can Accounting Rules Shake the Foundations of Capitalism?"
Critical Review (forthcoming 2009) (with Richard Epstein)

"Two Visions of Corporate Law" *George Washington Law Review* (forthcoming 2009)

"Corporate Philanthropy and the Market for Altruism" *Columbia Law Review* (forthcoming 2009) (with Anup Malani)

"Introduction to 'The Going Private Phenomenon: Causes and Implications'," *University of Chicago Law Review* (forthcoming 2009) (with Richard Epstein)

"One Hat Too Many? Investment Desegregation in Private Equity," *University of Chicago Law Review* (forthcoming 2009) (with William Birdthistle)

"The Impotence of Delaware's Taxes: A Short Response to Professor Barzuza's 'Delaware's Compensation'," *In Brief, University of Virginia Law Review* (forthcoming 2009)

"Citing Fiction." 11 *Green Bag 2d* 171 (Winter 2008)

"Other People's Money," 60 *Stanford Law Review* (2008) (with Douglas Baird)

"From 'Seriatim' to Consensus and Back Again: A Theory of Dissent" *Supreme Court Review* (2008)

"Deconstructing Duff & Phelps," 74 *University of Chicago Law Review* (2008)

"Capitalism 2.0," *Forbes.com* (March 10, 2008) (with Anup Malani)

"Paying CEOs In Bankruptcy: Executive Compensation When Agency Costs Are Low," 101 *Northwestern University Law Review* 1543 (2007)

"Prediction Markets for Corporate Governance," 82 *University of Notre Dame Law Review* 1343 (2007) (with Michael Abramowicz)

"Corporate Heroin: A Defense of Perks, Executive Loans, and Conspicuous Consumption," *Georgetown Law Journal* (2006) (with James Spindler)

"Everything Old is New Again: Lessons from Dodge v. Ford Motor Company," *CORPORATE LAW STORIES* (Foundation Press, forthcoming 2009)

"The Influence of F.A. Hayek on Law: An Empirical Analysis", *NYU Journal of Law & Liberty* (2005)

Working Papers:

"The Nanny Corporation and the Market for Paternalism," Working Paper

"Predicting Crime" (with Justin Wolfers and Eric Zitzewitz), Working Paper

"Scienter Disclosure" (with Alan Jagolinzer and Karl Muller), Working Paper

Works-in-progress:

Capitalism 2.0 (book project with Princeton University Press)

"The Futility of Regulating Insider Trading: The Case of Rule 10b5-1 Trading Plans"

"Anti-Safe Harbors"

"Governance at Gunpoint: Plaintiffs' Lawyers as Corporate Reformers"

"Bankruptcy for Competitive Advantage" (with Todd Zywicki)

Professional affiliations:

American Law and Economics Association

Bar admissions:

Maryland (inactive)

District of Columbia (inactive)

Resume

Name: Jonathan R. Macey

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Education: J.D. Yale Law School; Article and Book Review Editor, Yale Law Journal, 1982.
A.B., cum laude (economics), Harvard College, 1977.

Current Positions:

- Sam Harris Professor of Corporate Law, Finance, and Securities Regulation, Yale University;
- Deputy Dean, Yale Law School;
- Professor, Yale School of Management;
- Chair, Yale University Advisory Committee on Investor Responsibility (ACIR)
- Board of Directors, Yale Law School Center for the Study of Corporate Governance;
- Faculty Advisory Group, Yale Center for Corporate Governance and Performance
- National Adjudicatory Council, Financial Industry Regulatory Association ("FINRA") (formerly the National Association of Securities Dealers ("NASD"))
- Member, Economic Advisory Board, FINRA, Office of Economic Analysis
- Hoover Institution, Stanford University, Member, Task Force on Property Rights, Freedom and Prosperity

Subjects: Business Organizations (Corporations and Other Business Associations); Corporate Finance; Corporate Governance; Banking and Financial Institutions Regulation; Corporate Finance; the Economics of Regulation.

Other: Ph.d. (Law) honoris causa Stockholm School of Economics, 1996;

D.P. Jacobs prize for the most significant paper in volume 6 of the Journal of Financial Intermediation for "The Law & Economics of Best Execution" (co-authored with Maureen O'Hara) (1997);

Paul M. Bator Award for Excellence in Teaching, Scholarship and Public Service awarded by the University of Chicago Law School Chapter of the Federalist Society, 1995;

Member, Legal Advisory Committee to the Board of Directors, New York Stock Exchange;

Member, Economic Advisory Board, Financial Industry Regulatory Association ("FINRA") (formerly the National Association of Securities Dealers ("NASD")).

Fellow, Columbia Law School and Columbia Business School, Program in the Law & Economics of Capital Markets

Articles:

"Down and Out in the Stock Market: The Law and Economics of the Delisting Process," 51 *Journal of Law and Economics* 683 – 713 (2008)

"A Close Read of an Excellent Commentary on *Dodge v. Ford*," 3 *Virginia Law & Business Review*, 177 (2008)

"Introduction to Iconic Cases in Corporate Law," in "Iconic Cases in Corporate Law," pp. i – x (Thomson*West, 2008)

"Judicial Review of Corporate Decisions: *Kamin v. American Express Company*," in "Iconic Cases in Corporate Law," pp. 120-138 (Thomson*West, 2008)

"Out With the Bathwater: Erosion of Shareholders' Takeover Review," in "Iconic Cases in Corporate Law," pp. 209-239 (Thomson*West, 2008)

"Getting the Word Out About Fraud" A Theoretical Analysis of Whistleblowing and Insider Trading" 105 *Michigan Law Review* 1899 (2007).

Too Many Notes and Not Enough Votes: Lucian Bebchuk and Emperor Joseph II Kvetch about Contested Director Elections and Mozart's *Seraglio*," 93 *Virginia Law Review* 759 (2007)

"Executive Branch Usurpation of Power: Corporations and Capital Markets," 115 *Yale Law Journal* 2416 (vol. 9, 2006)

"The Nature of Conflicts of Interest Within the Firm," 31 *The Journal of Corporation Law* 613 (2006)

"The Politicization of American Corporate Governance," 1 Virginia Law & Business Review 10 (2006) (corrected (*forthcoming*) in volume 2, #2, Virginia Law & Business Review).

"Government as Investor: Tax Policy and the State," 23 Social Philosophy & Policy, (2006);

"Commercial Banking and Democracy: The Illusive Quest for Deregulation," 23 Yale Journal on Regulation 1 (2006);

"Occupation Code 541110: Lawyers, Self-Regulation, and the Idea of a Profession," 74 Fordham Law Review 1079 (2005);

"From Markets to Venues: Securities Regulation in an Evolving World," 58 Stanford Law Review 563 (2005)) (with Maureen O'Hara);

"Comment – The Limits of Legal Analysis: Using Externalities to Explain Legal Opinions in Structured Finance," 84 Texas L. Rev. 75 (2005);

"Delaware: Home of the World's Most Expensive Raincoat," 33 Hofstra L. Rev. 1131 (2005);

"Stock Transfer Restrictions and Issuer Choice in Trading Venues," 55 Case Western Reserve L. Rev. 587 (2005) (with Maureen O'Hara);

"Institutional and Evolutionary Failure and Economic Development in the Middle East," 30 The Yale Journal of International Law 397 (2005) (with Ian Ayres);

"Positive Political Theory and Federal Usurpation of the Regulation of Corporate Governance: The Coming Preemption of the Martin Act," 80 Notre Dame Law Review 951 (2005);

"Best Execution Regulation: From Orders to Markets," 13 Journal of Financial Transformation 1 (2005);

"Legal Scholarship: A Corporate Scholar's Perspective," 41 San Diego Law Review, 1759 (2004);

"Wall Street in Turmoil: Federal State Relations Post Eliot Spitzer," 70 Brooklyn Law Review 117 (2004);

"Was Arthur Andersen Different? An Empirical Examination of Major Accounting Firm Audits of Large Clients," Journal of Empirical Legal Studies, July 2004, vol. 1, issue. 2, pp. 263-300(38) (with Ted Eisenberg);

"Monitoring, Corporate Performance: The Role of Objectivity, Proximity and Adaptability in Corporate Governance," Cornell Law Review, 2004, vol. 89, issue 2, p. 356-393 (with Arnoud Boot) (reprinted (in English and Portuguese) in *Direito Empresarial: Aspectos atuais de Direito Empresarial brasileiro e comparado*, pp. 416-441 (English); 442-470 (Portuguese) (2005);

"Efficient Capital Markets, Corporate Disclosure and Enron," Cornell Law Review, 2004, vol. 89, issue 2, p. 394-422;

"Regulatory Globalization as a Response to Regulatory Competition," 52 Emory L. J. 1353 (2003);

"A Pox on Both Your Houses: Enron, Sarbanes-Oxley and the Debate Concerning the Relative Efficiency of Mandatory Versus Enabling Rules, 81 Washington University Law Quarterly, 329 (2003);

"Observations on the Role of Commodification, Independence, Governance, and the Demise of the Accounting Profession," 48 Villanova Law Review 1167 (2003) (with Hillary Sale);

"The Corporate Governance of Banks," 9 Economic Policy Review 91 (2003) (Publication of the Federal Reserve Bank of New York) (with Maureen O'Hara);

"Solving the Corporate Governance Problems of Banks: A Proposal" 120 The Banking Law Journal 309 (2003) (with Maureen O'Hara);

"The Economics of Stock Exchange Listing Fees and Listing Requirements" 11 Journal of Financial Intermediation 297 (2002) (with Maureen O'Hara);

"Displacing Delaware: Can the Feds Do a Better Job Than the States in Regulating Takeovers?" 57 The Business Lawyer 1025 (2002);

"Smith v. Van Gorkom: Insights About C.E.O.s, Corporate Law Rules, and the Jurisdictional Competition for Corporate Charters" 96 Northwestern Law Review 607 (2002);

"Cynicism and Trust in Politics and Constitutional Theory" 87 Cornell Law Review 280 (2002);

"Creditors Versus Capital Formation: The Case Against the European Legal Capital Rules" 86 Cornell Law Review 1165 (2001), rewritten in Italian as "Raccolta di Capitale di Rischio e Tutela dei Creditori: Una Critica Radicale alle Regole Europee sul Capitale Sociale" (Capital Formation and Creditor Protection: A Radical Critique of the European Legal Capital Rules), 57 Rivista delle Società 78 (2002) (with Luca Enriques);

"Regulatory Competition in the US Federal System: Banking and Financial Services" in Regulatory Competition and Economic Regulation: Comparative Perspectives, edited by Daniel C. Esty and Damien Geradin (Oxford University Press 2001) at pages 95-110;

"The 'Demand' for International Regulatory Cooperation: A Public Choice Perspective" in Transatlantic Regulatory Co-operation: Legal Problems and Political Perspectives" edited by George A. Bermann, Matthias Herdegen, & Peter L. Lindseth (Oxford University Press 2000) at pages 147-166;

"US and EU Structures of Governance as Barriers to Transatlantic Regulatory Cooperation" in Transatlantic Regulatory Co-operation: Legal Problems and Political Perspectives, edited by George A. Bermann, Matthias Herdegen, & Peter L. Lindseth (Oxford University Press 2000) at pages 357-372;

"The Business of Banking: Before and After Gramm-Leach-Bliley" 25 The Journal of Corporation Law 691 (2000);

"Securities Trading: A Contractual Perspective" 50 Case Western L. Rev. 269 (1999);

"Information and Transaction Costs as the Determinants of Tolerable Growth Levels" 155 Journal of Institutional and Theoretical Economics 617 (1999) (with Enrico Colombatto);

"Fiduciary Duties as Residual Claims: Obligations to Non-shareholder Constituencies from a Theory of the Firm Perspective," 84 Cornell L. Rev. 1266 (1999);

"Globalization, Exchange Governance, and the Future of Exchanges" Brookings Wharton Papers on Financial Services 1999, the Brookings Institution (with Maureen O'Hara);

"Regulating Exchanges and Alternative Trading Systems: A Law and Economics Perspective" 28 Journal of Legal Studies 17 (1999 with Maureen O'Hara);

"Lawyers in Agencies: Economics, Social Psychology, and Process," 61 Law & Contemporary Problems 109 (1998 (published in January, 1999));

"The Legality and Utility of the Shareholder Rights Bylaw," 26 Hofstra Law Review 835 (1998);

"Wall Street Versus Main Street: How Ignorance, Hyperbole, and Fear Lead to Regulation," 65 The University of Chicago Law Review 1487 (1998);

"Professor Simon on the Kaye Scholer Affair: Shock at the Gambling at Rick's Place in Casablanca" 23 Law and Social Inquiry 323 (1998);

"Winstar, Bureaucracy and Public Choice," 6 Supreme Court Economic Review 173 (1998);

"On the Failure of Libertarianism to Capture the Popular Imagination," 15 Journal of Social Philosophy 372 (1998);

"Regulation and Disaster: Some Observations in the Context of Systemic Risk," 1998 Brookings-Wharton Papers on Financial Services 405;

"Public Choice and the Legal Academy" (reviewing Mashaw, Greed, Chaos and Governance), 86 Georgetown Law Journal 1075 (1998);

"Italian Corporate Governance: One American's Perspective" 1998 Columbia Business Law Review 121 (1998);

"Measuring the Effectiveness of Different Corporate Governance Systems: Toward a More Scientific Approach" 10 Journal of Applied Corporate Finance 16 (1998);

"The Legality of the Shareholder Rights By-Law in Delaware: Preserving the Market for Corporate Control" 10 Journal of Applied Corporate Finance 63 (1998);

"The Law and Economics of Best Execution," 6 Journal of Financial Intermediation 188 (1977, published in 1998, with Maureen O'Hara);

"An Economic Analysis of Conflict of Interest Regulation," 82 Iowa Law Review 965 (1997, published in 1998, with Geoffrey P. Miller);

"Law and the Social Sciences" 21 Harvard Journal of Law & Public Pol'y 171 (1997);

"Flexibility in Determining the Role of the Board of Directors in the Age of Information" 19 Cardozo Law Review 291 (1997 with Enrico Colombatto);

"Public and Private Ordering and the Production of Legitimate and Illegitimate Legal Rules"
82 Cornell Law Review 1123 (1997);

"Lessons from Transition in Eastern Europe: A Property-Right Interpretation," 1 International Bulletin of the Institute of Macroeconomic Analysis and Development 10 (1997 with Enrico Colombatto);

"Manipulation on Trial: Economic Analysis and the Hunt Silver Case" 35 Journal of Economic Literature 162 (1997) (book review);

"A Public Choice Model of International Economic Cooperation and the Decline of the Nation State," 18 Cardozo Law Review 925 (1996 with Enrico Colombatto);

"Externalities and the Matching Principle: The Case for Reallocating Environmental Regulatory Authority," 23 Yale Law & Policy Review/ Yale Journal on Regulation Symposium: Constructing a New Federalism 25 (1996);

"Exchange-Rate Management in Eastern Europe: A Public-Choice Perspective," 16 International Review of Law and Economics 195 (1996 with Enrico Colombatto);

"Derivative Instruments: Lessons For the Regulatory State," 21 The Journal of Corporation Law 69 ((1995) published in 1996);

"Public Choice, Public Opinion, and the Fuller Court," 49 Vanderbilt Law Review 373 (1996) (book review);

"Originalism As An 'Ism'," 19 Harvard Journal of Law & Public Policy, 301 (1996);

"Exchange-Rate Management in Eastern Europe: A Public Choice Perspective," 6 Journal des Economistes et des Etudes Humaines 259-275 (1995 with Enrico Colombatto);

"Reflections on Professional Responsibility in a Regulatory State," 63 George Washington Law Review 1105 (1995 with Geoffrey P. Miller);

"Corporate Governance and Commercial Banking: A Comparative Examination of Germany, Japan, and the United States" 48 Stanford Law Review 73 (1995) (with Geoffrey P. Miller) reprinted in 9 Journal of Applied Corporate Finance 57 (1997);

"Public Choice Theory and the Transition Market Economy in Eastern Europe: Currency Convertibility and Exchange Rates" 28 Cornell Journal of International Law 387 (1995) (with Enrico Colombatto);

"The Regulation of Corporate Acquisitions: A Law and Economics Analysis of European Proposals for Reform" 1995 Columbia Business Law Review 495 (1995) (with Clas Bergström, Peter Högfeldt and Per Samuelsson);

"A Market Approach to Tort Reform via Rule 78" 80 Cornell Law Review 909 (1995) (with Geoffrey P. Miller);

"Language and Self-Interest: Preliminary Notes Towards a Public Choice Approach to Legal Language" in Northwestern University/Washington University Law and Linguistics Conference, 73 Washington University Law Quarterly 1001 (1995);

"The Limited Liability Company: Lessons for Corporate Law" in F. Hodge O'Neal Corporate and Securities Law Symposium: Limited Liability Companies, 73 Washington University Law Quarterly 433 (1995);

"Path Dependence, Public Choice, and Transition in Russia: A Bargaining Approach" 4 Cornell Journal of Law and Public Policy 379 (1995) (with Enrico Colombatto);

"A Rejoinder" 16 Cardozo Law Review 1781 (1995);

"Deposit Insurance, the Implicit Regulatory Contract, and the Mismatch in the Term Structure of Banks' Assets and Liabilities" 12 Yale Journal on Regulation 1 (1995) (with Geoffrey P. Miller);

"Towards a Regulatory Analysis of Deposit Insurance" in Prudential Regulation of Banks and Securities Firms" (Guido Ferrarini, editor, 1995) (with Geoffrey P. Miller);

"Packaged Preferences and the Institutional Transformation of Interests" 61 University of Chicago Law Review 1443 (1994);

"Health Care Reform: Perspectives from the Economic Theory of Regulation and the Economic Theory of Statutory Interpretation: 79 Cornell Law Review 1434 (1994);

"Judicial Preferences, Public Choice, and the Rules of Procedure" 23 Journal of Legal Studies 627 (1994);

"Property Rights, Innovation and Constitutional Structure" 11 Social Philosophy and Policy 181 (1994);

"A Public Choice View of Transition in Eastern Europe" 2-3 Economia delle Scelte pubbliche 113 (1994) (with Enrico Colombatto);

"Chief Justice Rehnquist, Interest Group Theory, and the Founders' Design" 25 Rutgers Law Review 577 (1994);

"Comment: Confrontation or Cooperation for Mutual Gain?" 57 Law and Contemporary Problems 45 (comment on Moe & Wilson, Presidents and the Politics of Structure 1994);

"Administrative Agency Obsolescence and Interest Group Formation: A Case Study of the SEC at Sixty" 15 Cardozo Law Review 909 (1994);

"The Pervasive Influence of Economic Analysis on Legal Decisionmaking" 17 Harvard Journal of Law and Public Policy 107 (1994);

"Civic Education and Interest Group Formation in the American Law School" 45 Stanford Law Review 1937 (1993);

"Corporate Law and Corporate Governance: A Contractual Perspective" 18 The Journal of Corporation Law 185 (1993);

"Thayer, Nagel and the Founders' Design: A Comment" 88 Northwestern Law Review 226 (1993);

"The McCarran-Ferguson Act of 1945: Reconceiving the Federal Role in Insurance Regulation" 68 New York University Law Review 13 (with Geoffrey P. Miller 1993);

"The Transformation of the American Law Institute" 61 George Washington Law Review 1412 (1993);

"Corporate Stakeholders: A Contractual Perspective" 43 University of Toronto Law Journal 401 (with Geoffrey P. Miller 1993);

"Double Liability of Bank Shareholders: A Look at the New Data" 28 Wake Forest Law Review 933 (1993);

"The Inevitability of Universal Banking" 19 Brooklyn Journal of International Law 203 (1993);

"Congress, the Court, and the Bill of Rights" 23 Cumberland Law Review 93 (Comment at Sixth Annual Federalist Society Symposium 1993);

"Kaye, Scholer, Firrea, and the Desirability of Early Closure: A View of the Kaye, Scholer Case From the Perspective of Bank Regulatory Policy" 66 Southern California Law Review 1115 (with Geoffrey P. Miller 1993);

"Representative Democracy" 16 Harvard Journal of Law & Public Policy 49 (1993);

"The Community Reinvestment Act: An Economic Analysis" 79 Virginia Law Review 291 (with Geoffrey P. Miller 1993);

"Auctioning Class Action and Derivative Litigation: A Rejoinder" 87 Northwestern Law Review 458 (with Geoffrey P. Miller 1993);

"Bank Failure: The Politicization of a Social Problem" 45 Stanford Law Review 289 (with Geoffrey P. Miller 1992);

"Implementing the FDIC Improvement Act of 1991" in Rebuilding Public Confidence Through Financial Reform, Conference Proceedings Volume, Ohio State University Business School, June 25, 1992;

"Nondeposit Deposits and the Future of Bank Regulation" 91 Michigan Law Review 237 (with Geoffrey P. Miller 1992);

"Judicial Discretion and the Internal Organization of Congress" 12 International Review of Law and Economics 280 (1992);

"Mandatory Pro Bono: Comfort for the Poor or Welfare for the Rich?" 77 Cornell Law Review 1115 (1992);

"The End of History and the New World Order: The Triumph of Capitalism and the Competition Between Liberalism and Democracy" 25 Cornell International Law Journal 277 (with Geoffrey P. Miller 1992);

"Separated Powers and Positive Political Theory: The Tug of War Over Administrative Agencies" 80 Georgetown Law Journal 671 (1992);

"Organizational Design and the Political Control of Administrative Agencies" 8 Journal of Law, Economics & Organization 93 (1992);

"The Canons of Statutory Construction and Judicial Preferences" 45 Vanderbilt Law Review 647 (with Geoffrey P. Miller 1992);

"Some Causes and Consequences of the Bifurcated Treatment of Economic Rights and 'Other' Rights Under the U.S. Constitution" 9 Social Philosophy and Policy 141 (1992);

"Double Liability of Bank Shareholders: History and Implications" 27 Wake Forest Law Review 31 (with Geoffrey P. Miller 1992 Symposium);

"Origin of the Blue Sky Laws" 70 Texas Law Review 347 (with Geoffrey P. Miller 1991);

"Toward Enhanced Consumer Choice in Banking: Uninsured Deposit Facilities as Financial Intermediaries for the 1990's" 1991 New York University Annual Survey of American Law 865 (with Geoffrey P. Miller 1991);

"The Fraud-on-the-Market Theory Revisited" 77 Virginia Law Review 1001 (with Geoffrey P. Miller 1991);

"Lessons From Financial Economics: Materiality, Reliance, and Extending the Reach of Basic v. Levinson" 77 Virginia Law Review 1017 (with Geoffrey P. Miller, Mark L. Mitchell and Jeffry M. Netter 1991);

"The Plaintiffs' Attorney's Role in Class Action and Derivative Litigation: Economic Analysis and Recommendations for Reform" 58 University of Chicago Law Review 1 (with Geoffrey P. Miller 1991);

"The Glass-Steagall Act and the Riskiness of Financial Intermediaries" 14 Research in Law and Economics 19 (with M. Wayne Marr and S. David Young 1991);

"Agency Theory and the Criminal Liability of Corporations" 71 Boston University Law Review 315 (1991 Symposium);

"State and Federal Regulation of Corporate Takeovers: A View From the Demand Side" 69 Washington University Law Quarterly 383 (1991);

"America's Banking System: The Origins and Future of the Current Crisis" 69 Washington University Law Quarterly 769 (1991 Symposium);

"An Economic Analysis of the Various Rationales for Making Shareholders the Exclusive Beneficiaries of Corporate Fiduciary Duties" 21 Stetson Law Review 23 (1991 Symposium);

"Politics, Bureaucracies, and Financial Markets: Bank Entry into Commercial Paper Underwriting in the United States and Japan" 139 University of Pennsylvania Law Review 369 (with David G. Litt, Geoffrey P. Miller and Edward L. Rubin 1990);

"The Role of the Democratic and Republican Parties as Organizers of Shadow Interest Groups" 89 Michigan Law Review 1 (1990);

"Federal Deference to Local Regulators and the Economic Theory of Regulation" 75 Virginia Law Review 265 (1991);

"Good Finance, Bad Economics: An Analysis of the Fraud on the Market Theory" 42 Stanford Law Review 1059 (with Geoffrey P. Miller 1990);

"The Stock Exchange as a Firm: The Emergence of Close Substitutes for the New York and Tokyo Stock Exchanges" 76 Cornell Law Review 1007 (with Hideki Kanda 1990);

"Auction Theory, MBO's and Property Rights in Corporate Assets" 25 Wake Forest Law Review 85 (1990 Symposium);

"Firm-Specific Human Capital Investments and Hegelian Ethics: A Comment on Cornell and Posner" 11 Cardozo Law Review 505 (1990);

"Courts and Corporations: A Comment on Coffee" 89 Columbia Law Review 1692 (1990);

"Macey Responds to Lubet" 75 Cornell Law Review 959 (1990);

"The Fraud on the Market Theory: Some Preliminary Issues" 74 Cornell Law Review 923 (1989);

"Restrictions on Short Sales: An Analysis of the Uptick Rule and its Role in View of the October 1987 Stock Market Crash" 74 Cornell Law Review 799 (with Mark Mitchell and Jeffry Netter 1989);

"Externalities, Firm-Specific Capital Investments, and the Legal Treatment of Fundamental Corporate Changes" 1989 Duke Law Journal 173 (1989);

"The Political Science of Regulating Bank Risk" 49 Ohio State Law Journal 1277 (1989);

"The Myth of 'Re-Regulation': The Interest Group Dynamics of Regulatory Change in the Financial Services Industry" 45 Washington & Lee Law Review 1275 (1989);

"Public Choice: The Theory of the Firm and the Theory of Market Exchange" 74 Cornell Law Review 43 (1989);

"How Separation of Powers Protects Individual Liberties" 41 Rutgers Law Review 813 (1989);

"The Chicken Wars as a Prisoners' Dilemma: What is in a Game?" 64 Notre Dame Law Review 447 (1989) (review of John A.C. Conybeare, Trade Wars: The Theory and Practice of International Commercial Rivalry);

"The Dangers of Pop Thinking About Japan" 22 Cornell Journal of International Law 623 (1989) (review of Daniel Burstein, Yen! Japan's New Financial Empire and its Threat to America);

"The Internal and External Costs and Benefits of Stare Decisis" 65 Chicago-Kent Law Review 93 (Special Symposium Issue on Post-Chicago Law and Economics, 1989);

"Trans Union Reconsidered" 98 Yale Law Journal 127 (with Geoffrey P. Miller 1988);

"The Missing Element in the Republican Revival" 97 Yale Law Journal 1673 (1988);

"Bank Failures, Risk Monitoring and the Market for Bank Control" 88 Columbia Law Review 1153 (with Geoffrey P. Miller 1988);

"The Myth of Competition in the Dual Banking System" 73 Cornell Law Review 677 (with Henry N. Butler 1988);

"State Anti-Takeover Statutes: Good Politics, Bad Economics" 1988 Wisconsin Law Review 467 (1988);

"Ethics, Economics and Insider Trading: Ayn Rand Meets the Theory of the Firm" 11 Harvard Journal of Law and Public Policy 785 (1988);

"Alan Bloom and the American Law School" 73 Cornell Law Review 1038 (1988) (review of Alan Bloom, The Closing of the American Mind);

"The Private Creation of Private Trusts" 37 Emory Law Journal 295 (1988);

"From Judicial Solutions to Political Solutions: The New, New Direction of the Rules Against Insider Trading" 39 Alabama Law Review 355 (1988 Symposium); reprinted 30 Corporate Practice Commentator 459 (1989);

"Transaction Costs and the Normative Elements of the Public Choice Model: An application to Constitutional Theory" 74 Virginia Law Review 471 (1988 Symposium);

"Market Discipline by Depositors: A Summary of the Theoretical and Empirical Arguments" 5 Yale Journal on Regulation 215 (with Elizabeth H. Garrett 1988);

"Regulation on Demand: Special Interest Groups and Insider Trading Law" 30 Journal of Law and Economics 311 (with David D. Haddock 1987);

"Competing Economic Views of the Constitution" 56 George Washington Law Review 50 (1987 Symposium);

"Regulation 13D and the Regulatory Process" 65 Washington University Law Quarterly 131 (with Jeffry M. Netter 1987 Symposium);

"Takeover Defensive Tactics and Legal Scholarship: Market Forces vs. the Policymaker's Dilemma" 96 Yale Law Journal 342 (1987);

"A Coasian Model of Insider Trading" 88 Northwestern Law Review 1449 (with David D. Haddock 1987);

"Toward An Interest Group Theory of Delaware Corporate Law" 65 Texas Law Review 469 (with Geoffrey P. Miller 1987);

"Property Rights in Assets and Resistance to Tender Offers" 73 Virginia Law Review 701 (with David D. Haddock and Fred S. McChesney 1987);

"Promoting Public-Regarding Legislation Through Statutory Interpretation: An Interest Group Model" 86 Columbia Law Review 223 (1986);

"ESOP's and Market Distortions" 23 Harvard Journal on Legislation 103 (with Richard L. Doernberg 1986);

"From Fairness to Contract: The New Direction of the Rules Against Insider Trading" 14 Hofstra Law Review 6 (1985 Symposium); reprinted in 18 Securities Law Review (1986);

"A Theoretical Analysis of Corporate Greenmail" 95 Yale Law Journal 13 (with Fred S. McChesney 1985);

"Controlling Insider Trading in Europe and America: The Economics of the Politics" (with David D. Haddock) (1986); in Law and Economics and the Economics of Regulation 149 (International Studies in Economics and Econometrics, Volume 13, Kluwer Academic Publishers);

"Shirking at the SEC: The Failure of the National Market System" University of Illinois Law Review, 315 (with David Haddock 1985);

"Special Interest Groups Legislation and the Judicial Function: The Dilemma of Glass-Steagall" 33 Emory Law Journal 1 (1984); Reprinted in 17 Securities Law Review 401 (1985);

"Toward a New Pedagogy" (Review of Loss, Fundamentals of Securities Regulation) 93 Yale Law Journal 1173 (1984);

Books:

"The Law of Banking and Financial Institutions," (Aspen Law & Business, fourth edition, 2009) (with Richard Cornell and Geoffrey P. Miller)

"Corporate Governance: Promises Made, Promises Broken (Princeton University Press 2008)

"Classics in Corporate Law and Economics," Jonathan Macey, editor, (Edward Elgar Publishing, 2008)

"Iconic Cases in Corporate Law," Jonathan Macey, editor, (Thomson*West, 2008)

"Macey on Corporate Law," Wolters Kluwer Law & Business, 2008

"Cases and Materials on Corporations Including Partnerships and Limited Liability Companies," (Thomson*West, Ninth Edition 2005) (with Robert Hamilton).

"Macey on Corporation Laws" (2 volume treatise), originally published in 1998, updated annually, Aspen Law & Business;

"Costly Policies: State Regulation and Antitrust Exemption in Insurance Markets" (with Geoffrey P. Miller, The AEI Press 1993);

"Svensk Aktiebolags Rätt I Omvandling: En Rättsekonomisk Analys" (Swedish Corporate Law in Transition: A Law and Economics Analysis (published in Swedish and English by SNS Förlag 1993);

"Third Party Legal Opinions: Evaluations and Analysis" (Prentice Hall Law and Business, 1992);

"Insider Trading: Economics, Politics, and Policy" (The AEI Press, 1991);

"An Introduction to Modern Financial Theory" (The American College of Trust and Estate Council Foundation (1991).

Miscellaneous
Publications:

"The Government Is Contributing to the Panic," The Wall Street Journal, October 11, 2008

"Wall Street-Main Street Power Game," The Washington Independent, October 17, 2008 (with James Holdcroft)

"Regulation and Scholarship: Constant Companions or Occasional Bedfellows?" 25 Yale Journal on Regulation 305-313 (2008) (speech delivered on the occasion of the 25th Anniversary of the Yale Journal on Regulation).

"Bear Stearns Too Big to Fail?" The Washington Independent, May 21, 2008 (<http://washingtonindependent.com/view/bear-stearns-too-big>)

"Brave New Fed" The Wall Street Journal, Monday, March 31, 2008, at A19.

"Regulatory McCarthyism" The Wall Street Journal, Tuesday, October 24, 2006 at A17

"From Orders to Markets: Who Should Decide What is 'Best Execution'" Regulation, Vol. 28, No. 2, Summer 2005.

"A Misguided Proposal to Regulate Risk-Taking" (letter) The Wall Street Journal, Tuesday, April 5, 2005.

"A Risky Proposition" (book review) The Wall Street Journal, Tuesday, March 15, 2005;

"How Does the SEC Arrive at its Fines Against Corporate Wrongdoers" June 21, 2004, Forbes;

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Remarks at Colloquium on the ALI Corporate Governance Project, 71 Cornell Law Review. (assorted pages) (1986);

"A Conduct Oriented Approach to the Glass-Steagall Act" 91 Yale Law Journal 102 (1981) (published as a student).

Current
Activities:

Chair, Association of American Law Schools Section on Legal Scholarship

Executive Committee, Association of American Law Schools Section on Corporate Law;

Member, American Law Institute;

Academic Advisory Board Committee, the Banking Law Anthology;

Academic Advisory Board, The Social Philosophy and Policy Center;

Board of Editors, Journal of Banking and Finance

Board of Editors, Journal of Banking Law

Board of Editors, Journal of Financial Crime;

Board of Editors, Corporate Practice Commentator;

Guest Contributor, Harvard Corporate Governance Blog

Employment History:

Sam Harris Professor of Corporate Law, Securities Law and Corporate Finance, Yale University, 2004 – present.

J. DuPratt White Professor of Law, Cornell Law School, 1991-2004;

Visiting Professor of Law, Yale University, 2003-2004;

Member, Board of Directors, Telxon Corporation, 1998- 1999 (appointed as dissident director in settlement of proxy contest dispute); Director nominee Rexene Corporation, 1999, Circon Corporation, 1998, Arvin Meritor, Inc. 2004).

Visiting Professor, Faculty of Law, Stockholm School of Economics, fall, 1993;

Research Fellow, International Centre for Economic Research, Turin Italy, winter, 1993, spring, 1994;

Professor of Law (with tenure), University of Chicago, 1990-1991;

Professor of Law, (with tenure), Cornell University, 1987-1990;

Visiting Professor of Law, The University of Chicago, fall quarter, 1989-1990;

Visiting Professor, University of Tokyo Faculty of Law, summer, 1989;

Visiting Associate Professor of Law, University of Virginia, 1986-1987;

Assistant to Associate Professor of Law, Emory University, 1983-1986;

Law Clerk to the Honorable Henry J. Friendly, United States Court of Appeals,
Second Circuit, 1982-1983 term of court;

Consultant, Municipal Finance Department, Lloyd Bush & Associates, New
York, NY (consultant representing municipalities and investment banks before
credit rating agencies (1978-1979));

Municipal Bond Trader, Bankers Trust Company, New York, NY (1977-1978).